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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1975

No. 75-1491

PACIFIC LEGAL FOUNDATION AND PUBLIC LANDS COUNCIL, INC.,
Petitioners,

vs.

NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.,
and
THOMAS KLEPPE, SECRETARY OF THE INTERIOR, and CURTIS BERKLUND, DIRECTOR OF THE BUREAU OF LAND MANAGEMENT,
Respondents.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the District of Columbia Circuit

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The petitioners, Pacific Legal Foundation and the Public Lands Council, Inc., respectfully pray that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the District

of Columbia Circuit entered in this proceeding on January 16, 1976.[1]

OPINIONS BELOW

The Memorandum Opinion and Judgment of the United States District Court for the District of Columbia are reported in 388 F. Supp. 829, and are reproduced in Appendix D.

A motion by Pacific Legal Foundation (PLF) and the Public Lands Council, Inc. (PLC), to reconsider that Opinion and Judgment was denied by Order of the District Court dated January 28, 1975. This unreported Order is reproduced in Appendix E.

The unreported Final Judgment of the District Court dated June 18, 1975, is reproduced in Appendix F.

The unreported Judgment of the United States Court of Appeals for the District of Columbia Circuit dated January 16, 1976, is reproduced in Appendix G.

JURISDICTION

The Judgment of the Court of Appeals (Appendix G) was entered January 16, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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[1]In addition to the respondents named in the caption of this case, the following persons and organizations were co-plaintiffs with the Natural Resources Defense Council, Inc., throughout the proceedings below and should be deemed respondents herein: Ada County Fish and Game League, National Council of Public Land Users, Nevada Outdoor Recreation Association, Inc., Oregon Environmental Council, and James Morgan. These respondents will be referred to collectively as "NRDC."

QUESTIONS PRESENTED

The first question is whether an agency of the federal government, whose primary duty is environmental protection, may comply with the environmental impact statement requirement of the National Environmental Policy Act by preparing, as required by the agency's statutory and regulatory scheme, the functional equivalent of an environmental impact statement.

The second question presented is whether, under the National Environmental Policy Act, a court may intervene in an agency's decision-making process and compel the agency to abandon its announced policy of preparing a program environmental impact statement and subsequent detailed environmental statements and analyses, and impose upon the agency the duty of preparing hundreds of geographically oriented environmental statements.[2]

The third question presented is whether an agency, which has taken the "hard look" at environmental

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[2]In this case, the District Court answered this question in the affirmative. In *Sierra Club v. Morton*, 514 F.2d 856 (D.C. Cir. 1975), the United States Court of Appeals for the District of Columbia Circuit similarly sanctioned court interference in the agency process, relying in part on the decision of the District Court in the instant case for its rationale. *See* 514 F.2d at 872 n.23. This Court has granted certiorari in *Sierra Club (sub noms. Kleppe v. Sierra Club*, No. 75-552, and *American Electric Power System v. Sierra Club*, No. 75-561, 44 U.S.L.W. 3397 (U.S. Jan. 13, 1976)) thereby questioning this entire line of decisions in the federal courts of the District of Columbia.

Because of the doubt already cast on the validity of the decision in the instant case, it is respectfully suggested that this Court may wish to hold consideration of the present petition in abeyance pending a decision on the merits in *Kleppe* and *American Electric Power System*. That decision may provide grounds for a summary reversal of the present case.

matters required by the National Environmental Policy Act and prepared a detailed environmental impact statement, can be compelled to go beyond the reasonable requirements of the Act and prepare hundreds of duplicative and wasteful impact statements when the environmental ramifications of the agency's project have already been adequately explored.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant portions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §§ 4321, *et seq.*), the Taylor Grazing Act (43 U.S.C. §§ 315, *et seq.*), and the Federal Range Code (43 C.F.R. §§ 4110.0-2, *et seq.*) are set forth in Appendices A, B, and C respectively.

STATEMENT OF THE CASE

A. Jurisdiction of the District Court

The jurisdiction of the United States District Court for the District of Columbia was invoked by NRDC under the following statutes: 28 U.S.C. § 1361 (mandamus); 5 U.S.C. §§ 701-706 (Administrative Procedure Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act); and 42 U.S.C. §§ 4321, *et seq.* (NEPA).

The District Court found that it had jurisdiction under NEPA.

B. The Attempt to Eliminate Livestock from the Public Lands of the United States

This suit was instituted by NRDC on October 30, 1973, seeking a declaration that NEPA (App. A, *infra* at p. 1) applies to the issuance and renewal of grazing permits by the Bureau of Land Management (BLM) of the Department of the Interior. The Complaint sought to enjoin issuance or renewal of grazing permits in all of the fifty-two federal grazing districts comprising 171 million acres of the public lands of the United States until the BLM prepared, publicly circulated, and considered multiple environmental impact statements (EIS) under NEPA discussing the federal defendants' practice of issuing or renewing such permits to private individuals for grazing livestock.

This suit was the culmination of the environmentalists' drive to eliminate privately owned herds of grazing animals from the public lands. NRDC alleged that private livestock owners who hold BLM grazing permits have allowed the public lands to deteriorate under the neglectful supervision of BLM. These charges are baseless. The BLM has administered these lands carefully, and the permit holders, whose livelihoods depend on maintenance of the environmental quality of the lands, have acted to prevent the deterioration of those lands.

The BLM is charged with the custody and management of millions of acres of public lands. Since passage of the Taylor Grazing Act, 43 U.S.C. §§ 315, *et seq.* (App. B, *infra* at p. 8) in 1934, BLM and

its predecessor agency, the Grazing Service, have achieved remarkable progress in improving the formerly badly deteriorated state of the public lands. Nevertheless, at the time NRDC's suit was instituted, progress had slowed and certain factions within BLM were searching for a method of obtaining increased funding in order to expand their regulatory activities beyond those permitted by the Taylor Grazing Act. The NRDC suit was seen by persons within BLM as a method of revamping BLM's management programs and increasing control of the public lands through increased funding and personnel. BLM personnel reasoned that if the Bureau were ordered by a court to prepare EIS's in regard to grazing permits, then BLM's position in requesting large budget increases from Congress would be greatly strengthened.

Those persons holding grazing permits saw BLM's maneuvers as an attempt by an increasingly centralized bureaucracy to extend its power over an industry struggling for survival. In an affidavit, one permit holder stated that the activities of BLM personnel are those of "negatively oriented empire builders."

During the course of this suit, there have been 15,000 permits for use of the public lands for grazing outstanding. Thus, there are tens of thousands of persons in the eleven western states who are dependent on continued access to the public lands as the source of their livelihood, the grazing of livestock. Further, approximately fourteen percent of all livestock in the United States spend a part of their lives grazing on those lands. Indeed, the economies of large

regions and of entire states are dependent upon ready access to the lands by privately owned herds of grazing animals.

Viewing events at the time suit was instituted, the grazing permit holders felt besieged on two fronts: on one hand, NRDC was actively trying to run them off the range in a crusade to "save the environment"; on the other, BLM, which is nominally charged with fostering their interests under the Taylor Grazing Act, was bowing to NRDC's demands by voluntarily preparing an EIS. Thus the Pacific Legal Foundation and the Public Lands Council, Inc., intervened in the litigation to inject a degree of objectivity.

PLF and PLC represent two distinct interests. PLC represents the real parties in interest. It is an association of grazing permittees whose livelihoods depend upon those permits. PLF, a nonprofit, tax-exempt, public interest legal organization, intervened to voice the interest of the public in this litigation, an interest, at a time of both high inflation and recession, in continued access at reasonable prices to red meat, the chief source of dietary protein.

PLF and PLC feared (and still fear) that the financial burden of preparing numerous EIS's would be passed on to the grazing permittees, many of whose operations are marginally profitable. Furthermore, they fear that any delay or restriction in the issuance or renewal of grazing permits would greatly disrupt the livestock industry, those communities and states dependent upon that industry, as well as the consum-

ing public which will be forced by the resulting scarcity of red meat to pay higher prices. Additionally, they fear that the preparation of hundreds of EIS's will serve no useful purpose; rather, they will invite controversy—especially in the form of suits seeking to challenge their sufficiency.

Throughout this litigation BLM was preparing a "program" EIS, *i.e.* one that dealt with the agency's overall livestock grazing managment program on the public lands. It was BLM's position (until it was ordered otherwise by the District Court) that: 1) NRDC's suit was premature, since the program EIS was in draft form during the law suit; and 2) the program EIS, supplemented by BLM from time to time by further EIS's met NEPA's requirements.

Unfortunately, the District Court refused to await release of the final version of the program EIS. It issued its opinion December 30, 1974. The program EIS was dated December 31, 1974.

C. The District Court's Opinion and Subsequent Events

The Memorandum Opinion and Judgment of the District Court (App. D, *infra* at p. 46) granted NRDC's motion for summary judgment and denied the motions of the federal defendants and of PLF and PLC for summary judgment. Declaring that "to wait until the filing of the final programmatic EIS would be a useless act" (App. D, *infra* at p. 58), the Court ordered the BLM to prepare multiple EIS's on a geographically specific basis and

to undertake negotiations with NRDC to set a schedule for such EIS's.[3]

NRDC and BLM conducted negotiations for approximately three months. Representatives of PLF and PLC were not included in those negotiations. The climax of these meetings was the submission to the District Court in April 1975 of the Joint Motion of the Plaintiffs and Federal Defendants for the Court to Enter Proposed Judgment in Accordance with Settlement Agreement.

This Agreement is the tool long sought by the NRDC to drive grazing animals from the public lands. By its Final Judgment (App. F, *infra* at p. 76) dated June 18, 1975, the District Court sanctioned the NRDC/BLM Agreement which:

(a) Ordered BLM to prepare a minimum of 212 EIS's by 1988 for geographically delineated areas of the public lands;

(b) Gave NRDC the right to litigate the adequacy under NEPA of each and every one of the 212 (or more) EIS's;

(c) Imposed upon BLM the responsibility to submit notice to NRDC until 1988 whenever any material or immaterial deviation from the Agreement should occur, thereby granting to an advocatorial interest group dis-

[3] A motion by PLF and PLC for reconsideration of the December 30, 1974, judgment, in light of subsequently discovered evidence, was denied by the District Court on January 28, 1975. *See* App. E, *infra* at p. 74.

cretionary power over an important agency of the federal government; and

(d) Approved BLM's agreement to dismiss its appeal from the District Court's Judgment.

BLM abided by its agreement, dismissed its appeal, and commenced preparation of the first of the 212 EIS's. Contemporaneously, BLM admitted that it knew of no legal basis for obligating the Department of the Interior to make expenditures over a thirteen-year period, since departmental appropriations are on a yearly basis.[4]

D. The Court of Appeals' Decision

Thus PLF and PLC alone pursued their separate appeal from the decision of the District Court. On January 16, 1976, the United States Court of Appeals for the District of Columbia Circuit affirmed the Judgment of the District Court without opinion.[5] *See* App. G, *infra* at p. 84.

REASONS FOR GRANTING THE WRIT

The significance of this case, both within its factual limits and as broad legal precedent, cannot be overstated.

The District Court's decision has been the basis for an agency's demanding $55 million from Congress in order to expand its bureaucratic domain.

[4]Department of the Interior News Release, "Interior Sets a 13-Year Schedule for Preparing Environmental Impact Statements on Grazing Lands," June 20, 1975, at 3.

[5]Since the Court of Appeals issued no written opinion, the opinion of the District Court will be referred to hereinafter as the final decision on the merits.

The decision directly and adversely affects the lives of hundreds of thousands of persons in the Western United States dependant (in many cases for generations) upon ready access to the public lands for livestock grazing. The decision gives those who would drive the grazing permit holders from the "public" lands the tool for doing so.

The decision ensures that the BLM's grazing management program will be tied up in federal courts for decades because of NRDC's express reservation in the court-approved Agreement of the right to challenge each of the 212 EIS's.[6] Thus the decision allows disruption of a wise and environmentally sound use of the public lands of the United States.[7]

By the decision, the District Court unwisely injected itself into an agency's statutorily mandated policy of environmental protection, thwarted that policy, and caused the agency to abandon proven methods of environmental protection.

As such, the decision is of substantial importance to large portions of the population in the Western United States; adversely affects the environmental quality of the public lands of the United States; and conflicts with the language of NEPA, two decisions of this Court, and decisions of other courts of appeals.

[6]This has been confirmed by a recent motion to the District Court for a six-month postponement in the completion date for the Challis, Idaho, EIS (federal defendants' Notice of Proposed Deviation from Scheduled Preparation of Environmental Impact Statements on Livestock Grazing, dated April 2, 1976).

[7]*Cf. United States v. Coleman*, 390 U.S. 599, 601 (1968), where certiorari was granted "because of the importance of the decision to the utilization of the public lands."

1. Under the Taylor Grazing Act (App. B, *infra* at p. 8), the Secretary of the Interior (and by delegation, the BLM) is charged with the environmental protection of the public lands of the United States. Rules and regulations have been promulgated under that Act which were designed to stop the deterioration of the public lands which had taken place up to the time of the Act. By its decision, the District Court seeks to superimpose the NEPA EIS process on the presently effective and environmentally protective methods mandated by the Taylor Grazing Act and its rules and regulations. The effect of this will be to revamp the entire program of public lands management because of the limited funding and personnel available to BLM. The District Court's decision has already caused BLM to abandon range management methods heretofore employed under the Taylor Grazing Act in order to prepare the 212 EIS's. The result will be the repeal of the Taylor Grazing Act using NEPA.

This Court's *United States v. SCRAP*, 412 U.S. 669, 694 (1973) (SCRAP I), held that NEPA was not intended to repeal other statutes by implication. This Court based its ruling on 42 U.S.C. § 4335 ("The policies and goals set forth in this chapter are supplementary to those set forth in existing authorizations of Federal agencies") and 42 U.S.C. § 4334 ("Nothing in section 4332 or 4333 of this title shall in any way affect the specific statutory obligations of any Federal agency . . . to comply with criteria or standards of environmental quality . . . ").

The District Court here has mandated a gross interference with the BLM's duties under the Taylor Grazing Act, thereby partially repealing that Act. Its opinion therefore conflicts with an applicable decision of this Court.

2. In administering the public lands, the BLM is charged by the Taylor Grazing Act and its rules and regulations with protection of the environment of those lands. The primary purpose of the Taylor Grazing Act was to stop injury to the public grazing lands by preventing overgrazing and soil deterioration. Pub. L. No. 73-482, § 2 (June 28, 1934). Under the mandates of the Act, the BLM has developed elaborate regulations (App. C, *infra* at p. 31) which, as implemented, effectively evaluate all environmental aspects of use of the lands, and amount to the "functional equivalent" of an EIS under NEPA.

Numerous courts, recognizing the waste inherent in evaluating the same aspects of the environment twice, have exempted agencies from NEPA when the agencies are in functional compliance with the Act. The latest[8] judicial exemption from NEPA was announced

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[8] *See Anaconda Company v. Ruckelshaus*, 482 F.2d 1301, 1305-1306 (10th Cir. 1973); *Buckeye Power, Inc. v. Environmental Protection Agcy.*, 481 F.2d 162, 175 (6th Cir. 1973); *Duquesne Light Co. v. Environmental Protection Agcy.*, 481 F.2d 1, 9 (3d Cir. 1973); *Appalachian Power Co. v. Environmental Pro. Agcy.*, 477 F.2d 495, 508 (4th Cir. 1973); *Getty Oil Company (Eastern Operations) v. Ruckelshaus*, 467 F.2d 349, 359 (3d Cir. 1972), *cert. denied*, 409 U.S. 1125 (1973), all of which found that "functional compliance" with NEPA sufficed.

In addition, the Resources Agency of the State of California has categorically exempted from that state's NEPA analog all

in *State of Wyoming v. Hathaway,* 525 F.2d 66 (10th Cir. 1975), *petition for cert. filed sub nom. State of Wyoming v. Kleppe,* 44 U.S.L.W. 3494 (U.S. Mar. 2, 1976 (No. 75-1190)), where the Tenth Circuit exempted the Environmental Protection Agency from NEPA on the ground that its specific, environmentally protective activities under the Federal Insecticide, Fungicide, and Rodenticide Act amount to the "functional equivalent" of an EIS. The Tenth Circuit noted that:

> . . . NEPA does not call for any particular framework or procedure and so long as the impact statement is relevant and thorough it need not be extensive. *State of Wyoming v. Hathaway, supra* at 72.

This ruling reflects the flexibility necessarily inherent in a statute, such as NEPA, which establishes broad national policy (42 U.S.C. § 4321) and which supplements rather than supersedes existing agency authorizations (42 U.S.C. §§ 4334-4335).

The ruling of the District Court in the instant case conflicts philosophically and legally with the *State of Wyoming* decision. Here the District Court declined to view the BLM's procedures as the functional equivalent of an EIS (App. D, *infra* at pp. 51-52);

"regulatory programs of public agencies whose purpose includes environmental protection and whose process involves the functional equivalent of an [impact statement]." *See California EIR Monitor* at 07 (March 24, 1975).

Also, see *Gulf Oil Corporation v. Simon,* 502 F.2d 1154, 1157 (Em. App. 1974), and *Dry Color Mfrs. Ass'n. Inc. v. Department of Labor,* 486 F.2d 98, 107-108 (3d Cir. 1973), which exempted federal agency action from NEPA on other grounds.

rather, it sought to shap BLM's actions for decades to come by the rigid imposition of 212 formal EIS's.

In declining to grant BLM a limited exemption from NEPA, the Court of Appeals appears to be reversing or at least limiting a line of its own cases. These held that there is:

> . . . little need in requiring a NEPA statement from an agency whose raison d'etre is the protection of the environment and whose [decisions are] necessarily infused with the environmental considerations so pertinent to Congress in designing the statutory framework. . . . *International Harvester Company v. Ruckelshaus,* 478 F.2d 615, 650 n.130 (D.C. Cir. 1973).[9]

By refusing to apply the legal principle enunciated in *International Harvester* to the BLM/public lands context, the Court of Appeals has cast doubt on a long line of its own well-reasoned cases, issued an opinion which conflicts with the holdings of the Third, Fourth, Sixth and Tenth Circuits, and violated national environmental policy as set forth in NEPA.

Thus this Court is faced with deciding an extremely important question of federal law: whether NEPA is flexible and permits attainment of its goals without the formal EIS process, especially where an agency

[9] *Accord, Environmental Def. F., Inc. v. Environmental Pro. Agcy.,* 489 F.2d 1247, 1256-1257 (D.C. Cir. 1973); *Essex Chemical Corporation v. Ruckelshaus,* 486 F.2d 427, 431 (D.C. Cir. 1973), *cert. denied sub nom. Appalachian Power Co. v. Environmental Protection Agency,* 416 U.S. 969 (1974); and *Portland Cement Association v. Ruckelshaus,* 486 F.2d 375, 384-387 (D.C. Cir. 1973), *cert. denied,* 417 U.S. 921 (1974).

is mandated by law to protect the environment and prepares the functional equivalent of an EIS.

3. During the course of proceedings in the District Court, the BLM was voluntarily preparing a broad, program EIS to assess the cumulative environmental impacts of its grazing permit program on the public lands. The BLM had also announced its immediate plans to prepare three more "generic" EIS's[10] and other supplemental EIS's for smaller land areas. Without awaiting release of the *first* of those documents, the District Court declared the EIS policy of BLM illegal, declared the program EIS irrelevant, and ordered BLM to prepare 212 separate, site-specific EIS's. *See* App. D, *infra* at p. 46, and App. F, *infra* at p. 76. In doing so, the Court acknowledged that it probably should have waited at least for release of the program EIS. App. D, *infra* at p. 58. Nevertheless, it declared the program EIS irrelevant and ordered a sweeping change in BLM policy.

First, it should be noted that this type of judicial intervention in the reasonable exercise of agency discretion under NEPA is already under review in this Court. *See Kleppe v. Sierra Club,* No. 75-552, and *American Electric Power System v. Sierra Club,* No. 75-561, *cert. granted,* 44 U.S.L.W. 3397 (U.S. Jan. 13, 1976). The present case presents at least as important a question of lack of judicial restraint as that presented in the two cases already before this Court.

[10]See Final Environmental Impact Statement, Livestock Grazing Management on National Resource Lands, Vol. I, at III-6 n.1.

Moreover, the decision in the instant case conflicts directly with that of *Natural Resources Def. Coun., Inc. v. Tennessee Val. Auth.,* 367 F. Supp. 122 (E.D. Tenn. 1973), *aff'd.,* 502 F.2d 852 (6th Cir. 1974). In the *T.V.A.* case, the District Court approved T.V.A.'s preparation of a program EIS, without preparation of contract-specific EIS's.[11]

In the instant case, the District Court was aware of the *T.V.A.* decision and went to great lengths to distinguish it factually. App. D, *infra* at p. 61. In drawing a factual distinction, however, the Court missed the point that it was rationalizing its own interference with agency discretion and thwarting BLM's reasonable, voluntary NEPA evaluations.

NEPA announced a national *policy*[12] to be applied to the special facts and situations within each agency's area of expertise as the agency sees fit. When an agency voluntarily decides to abide by its NEPA responsibilities by preparing a program EIS, followed by such supplemental environmental assessments as it deems necessary, it is not the province of a court to interfere with that policy and thereby reshape an agency and jeopardize the livelihoods of thousands of citizens who depend on the continuity of the agency's policy.

[11]*See also Cartwright Van Lines, Inc. v. United States,* 400 F. Supp. 795 (W.D. Mo. 1975), which approved an agency's preparation of a national EIS, followed by individualized environmental *assessments* (not EIS's) as localized decisions are made.

[12]42 U.S.C. § 4321: "The purposes of this chapter are: To declare a national policy . . . ." *See* 42 U.S.C. § 4331(b).

Also in conflict with the District Court's decision is *East Tennessee Energy Group v. Seamans,* ..... F. Supp. ....., 7 ERC 2144, 2145 (D.D.C. 1975), which stated that so long as the program EIS subsumes the individual projects, project-specific EIS's need not be prepared. Indeed, as other courts have held, segmentation of an overall program may be improper where the impacts interrelate and affect the whole area concerned. *See Ecology Center of Louisiana, Inc. v. Coleman,* 515 F.2d 860, 870 (5th Cir. 1975), and *Jones v. Lynn,* 477 F.2d 885, 890-891 (1st Cir. 1973).

In a similar vein are the Council on Environmental Quality's[13] *Guidelines on Preparation of Environmental Impact Statements* which require preparation of broad, program statements, followed by statements on major individual actions. 40 C.F.R. § 1500.6(d)(1). The BLM was embarked on a program that would have complied literally with CEQ's *Guidelines* until blocked by the District Court.

Finally, in the context of BLM's management of the public lands, it would be wasteful to prepare a separate EIS for each of the fifty-two grazing districts or portions thereof. The areas all have one thing in common: they are grazing lands and either suitable or not suitable for use as such. To restate this fact 212 different times when it has already been stated in an adequate manner once in the program EIS and several times under the Taylor Grazing Act's pro-

[13]CEQ is the agency charged by NEPA with overseeing federal agency compliance with NEPA. 42 U.S.C. § 4344(3).

cedures would be ludicrous and wasteful.[14] At best, the 212 EIS's will be duplicative; at their probable worst, one basic EIS will be prepared from which hundreds will be "mimeographed" in which only the words and facts are rearranged so it seems a new document has been prepared.

This type of *pro forma* papershuffling is not the goal of NEPA. The decision-makers in BLM have been put on full and adequate notice of the environmental effects of their actions by the program EIS. They need not be reminded of the same basic facts 212 different times over the next thirteen years.

4. The decision of the Court below conflicts with an applicable decision of the Supreme Court: *Aberdeen & Rockfish R. Co. v. SCRAP,* 422 U.S. 289 (1975) (SCRAP II). That case held that where environmental issues pervade an agency proceeding, a project need not be stopped and begun over again, even though a formal EIS or EIS's did not accompany the project through the decision-making process. *Id.* at 322-328. As long as the agency takes a "hard look" at environmental exigencies, literal compliance with NEPA is not required. *Id.* at 322.

The BLM is charged with protection of the environment: it is the "Public Lands Environmental Protection Agency," even though the word "environment" is not in its name. The Taylor Grazing Act and regu-

[14]In its refusal to await release of the program EIS, the District Court apparently overlooked the fact that the program EIS dwells at considerable length (Vol. I, at II-1 through II-90) on the localized environments of the public lands.

lations mandate a "hard look" at the environment. For the Court to require 212 EIS's[15] is to force more upon BLM than NEPA requires. This is "environmental overkill."

NEPA establishes a national policy and to effectuate that policy, agencies are to prepare "a detailed statement . . . on . . . the environmental impact of the proposed action." 42 U.S.C. § 4332(2)(C). This seemingly simple statement has given birth to the rigid, formalized environmental impact statement, a term which has become a formal institution in many agencies of the federal government. Yet the legislative history of NEPA suggests that Congress, in requiring EIS's, was not imposing the extensive network of formalized bureaucratic paperwork envisioned by the courts below in this case. *See* H. R. Rep. No. 378, 91st Cong., 1st Sess. (1969), which sets forth the understanding of Congress that the NEPA/EIS process would cost the federal government $1 million per year for all agencies. Here, by BLM's own estimates, BLM *alone* will spend an average of $4.23 million per year for the next thirteen years. Thus somewhere along the line, federal courts have lost sight of NEPA's goal: to compel agencies, which had *never* taken environmental exigencies into consideration, to incorporate such matters into their regular decision-making process. Here, that problem never existed.

[15]Nor is there any evidence in the record below to support the Court's determination that 212 EIS's must be prepared, other than the agreement between BLM and NRD that this number would suffice. Yet evidence abounds that this number will be costly, duplicative, and a bureaucrat's dream-come-true.

The Taylor Grazing Act and regulations mandate that environmental matters pervade the BLM decision-making process. Moreover, BLM has gone beyond the policy requirements of NEPA and has prepared an EIS which takes a "hard look" at the environment of the public lands, as suggested in *SCRAP II*. To require 212 additional formalized, repetitive statements is to shackle a proven program of public lands protection. This will literally stop the BLM's program and force it to begin anew. Such a ruling contravenes the underlying spirit of NEPA and conflicts with the reasonable interpretation of NEPA announced by this Court in *SCRAP II*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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April 13, 1976.

(Appendices Follow)

APPENDICES

Appendix A

THE NATIONAL ENVIRONMENTAL POLICY ACT
(42 U.S.C. §§ 4321, et seq.)

PURPOSE

Sec. 2. The purposes of this Act are: To declare a national policy which will encourage productive enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government in cooperation with State and local governments, and other concerned public and private organizations, to use all practical means and measures, including financial and technical assistance, in a manner calculated to foster and promote the gen-

eral welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important, historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under sub-paragraph (C) after January 1, 1970, for any

major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the view of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State, or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into

conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality. (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

* * * * *

Appendix B

THE TAYLOR GRAZING ACT
As Amended and Supplemented
(43 U.S.C. §§ 315, et seq.)

AN ACT

To stop injury to the public grazing lands by preventing overgrazing and soil deterioration; to provide for their orderly use, improvement, and development; to stabilize the livestock industry dependent upon the public range; and for other purposes. Approved June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), July 14, 1939 (53 Stat. 1002), July 30, 1947 (61 Stat. 630), August 6, 1947 (61 Stat. 790), June 19, 1948 (62 Stat. 533), and May 28, 1954 (68 Stat. 151).

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That in order to promote the highest use of public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska), which are not in national forests, national parks and monuments, Indian reservations, revested Oregon and California Railroad

grant lands, or revested Coos Bay Wagon Road grant lands, and which in his opinion are chiefly valuable for grazing and raising forage crops; PROVIDED, That no lands withdrawn or reserved for any other purpose shall be included in any such district except with the approval of the head of the department having jurisdiction thereof. Nothing in this Act shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law except as otherwise expressly provided in this Act, not to affect any land heretofore or hereafter surveyed which, except for the provisions of this Act, nor to affect any land heretofore or hereinor as limiting or restricting the power or authority of any State as to matters within its jurisdiction. Whenever any grazing district is established pursuant to this Act, the Secretary shall grant to owners of land adjacent to such district, upon application of any such owner, such rights-of-way over the lands included in such district for stock driving purposes as may be necessary for the convenient access by any such owner to marketing facilities or to lands not within such district owned by such person or upon which such person has stockgrazing rights. Neither this Act nor the Act of December 29, 1916 (39 Stat. 862; U.S.C., title 43, secs. 291 and following), commonly known as the "Stock Raising Homestead Act," shall be construed as limiting the authority or policy of Congress or the President to include in national

forests public lands of the character described in section 24 of the Act of March 3, 1891 (26 Stat. 1103; U.S.C., title 16, sec. 471), as amended, for the purposes set forth in the Act of June 4, 1897 (30 Stat. 35; U.S.C., title 16, sec. 475), or such other purposes as Congress may specify. Before grazing districts are created in any State as herein provided, a hearing shall be held in the State, after public notice thereof shall have been given, at such location convenient for the attendance of State officials, and the settlers, residents, and livestock owners of the vicinity, as may be determined by the Secretary of the Interior. No such district shall be established until the expiration of ninety days after such notice shall have been given, nor until twenty days after such hearing shall be held: PROVIDED, HOWEVER, That the publication of such notice shall have the effect of withdrawing all public lands within the exterior boundary of such proposed grazing district from all forms of entry or settlement. Nothing in this Act shall be construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with the laws of the United States or of any State, or as vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district. (43 U.S.C., section 315)

SEC. 2. The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts as may be created under the authority of the foregoing section, and he shall make such rules and regulations

and establish such service, enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of this Act and to insure the objects of such grazing districts, namely to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range; and the Secretary of the Interior is authorized to continue the study of erosion and flood control and to perform such work as may be necessary amply to protect and rehabilitate the areas subject to the provisions of this Act, through such funds as may be made available for that purpose, and any willful violation of the provisions of this Act or of such rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500. (43 U.S.C., sec. 315a)

SEC. 3. The Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range, upon the payment annually of reasonable fees in each case to be fixed or determined from time to time, and in fixing the amount of such fees the Secretary of the Interior shall take into account the extent to which such districts yield public benefits over and above those accruing to the users of the forage resources for livestock purposes. Such fees shall consist of a grazing fee for the use of the range, and a range-improvement fee which, when appropriated by the Congress, shall be available until

expended solely for the construction, purchase, or maintenance of range improvement. Grazing permits shall be issued only to citizens of the United States or to those who have filed the necessary declarations of intention to become such, as required by the naturalization laws, and to groups, associations, or corporations authorized to conduct business under the laws of the State in which the grazing district is located. Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them, except that until July 1, 1935, no preference shall be given in the issuance of such permits to any such owner, occupant, or settler, whose rights were acquired between January 1, 1934, and December 31, 1934, both dates inclusive, except that no permittee complying with the rules and regulations laid down by the Secretary of the Interior shall be denied the renewal of such a permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. Such permits shall be for a period of not more than ten years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the Interior, who shall specify from time to time numbers of stock and seasons of use. During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease, during the life of the permit,

the Secretary of the Interior is authorized, in his discretion to remit, reduce, refund in whole or in part, or authorize postponement of payment of grazing fees for such depletion period so long as the emergency exists: PROVIDED FURTHER, That nothing in this Act shall be construed or administered in any way to diminish or impair any right to the posession and use of water for mining, agriculture, manufacturing, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law. So far as consistent with the purposes and provisions of this Act, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands. (43 U.S.C., sec. 315b)

SEC. 4. Fences, wells, reservoirs, and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands with such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve. Permittees shall be required by the Secretary of the Interior to comply with the provisions of law of the State within which the grazing district is located with respect to the cost and maintenance of partition fences. No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant

until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior. The decision of the Secretary in such cases is to be final and conclusive. (43 U.S.C., sec. 315c)

SEC. 5. The Secretary of the Interior shall permit, under regulations to be prescribed by him, the free grazing within such districts of livestock kept for domestic purposes; and provided that so far as authorized by existing law or laws hereinafter enacted, nothing herein contained shall prevent the use of timber, stone, gravel, clay, coal, and other deposits by miners, prospectors for mineral, bona fide settlers and residents, for firewood, fencing, buildings, mining, prospecting, and domestic purposes within areas subject to the provisions of this Act. (43 U.S.C., sec. 315d)

SEC. 6. Nothing herein contained shall restrict the acquisition, granting, or use of permits or rights-of-way within grazing districts under existing law; or ingress or egress over the public lands in such districts for all proper and legal purposes; and nothing herein contained shall restrict prospecting, locating, developing, mining, entering, leasing, or patenting the mineral resources of such districts under law applicable thereto. (43 U.S.C., sec. 315e)

SEC. 7. The Secretary of the Interior is hereby authorized in his discretion, to examine and classify any lands, withdrawn or reserved by Executive Order of November 26, 1934 (numbered 6910), and amend-

ments thereto, and Executive Order of February 5, 1935 (numbered 6964), or within a grazing district, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under this Act, or proper for acquisition in satisfaction of any outstanding lieu, exchange, or script rights or land grant, and to open such lands to entry, selection, or location for disposal in accordance with such classification under applicable public-land laws, except that homestead entries shall not be allowed for tracts exceeding three hundred and twenty acres in area. Such lands shall not be subject to disposition, settlement, or occupation until after the same have been classified and opened to entry; PROVIDED, That locations and entries under the mining laws, including the Act of February 25, 1920, as amended, may be made upon such withdrawn and reserved areas without regard to classification and without restrictions or limitation by any provision of this Act. Where such lands are located within grazing districts reasonable notice shall be given by the Secretary of the Interior to any grazing permittee of such lands. The applicant, after his entry, selection, or location is allowed, shall be entitled to the possession and use of such lands: PROVIDED, That upon the application of any applicant qualified to make entry, selection, or location, under the public-land laws, filed in the land office of the proper district, the Secretary of the Interior shall cause any tract to be classified, and such application, if allowed by the Secretary of the Interior, shall

entitle the applicant to a preference right to enter, select, or locate such lands if opened to entry as herein provided. (43 U.S.C., sec. 315f)

SEC. 8 (a) Where such action will promote the purposes of a district or facilitate the administration of the public lands, the Secretary is authorized to accept on behalf of the United States any lands within or without the exterior boundaries of a grazing district as a gift.

(b) When public interest will be benefited thereby the Secretary is authorized to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district, and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than fifty miles within the adjoining State nearest the base lands.

(c) Upon application of any State to exchange lands within or without the boundaries of a grazing district the Secretary of the Interior shall, and is hereby, directed to proceed with such exchange at the earliest practicable date and to cooperate fully with the State to that end, but no State shall be permitted to select lieu lands in another State. The Secretary of the Interior shall accept on behalf of the United States title to any State-owned lands within or without the boundaries of a grazing district, and in exchange therefor issue patent to surveyed grazing district land not otherwise reserved or appropriated or unappropriated and unreserved surveyed public land; and in

making such exchange the Secretary is authorized to patent to such State, land either of equal value or of equal acreage: PROVIDED, That no State shall select public lands in a grazing district in furtherance of any exchange unless the lands offered by the State in such exchange lie within such grazing district and the selected lands lie in a reasonably compact body which is so located as not to interfere with the administration or value of the remaining land in such district for grazing purposes as set forth in this Act.

When an exchange is based on lands of equal acreage and the selected lands are mineral in character, the patent thereto shall contain a reservation of all minerals to the United States; and in making exchanges of equal acreage the Secretary of the Interior is authorized to accept title to offered lands which are mineral in character, with a mineral reservation to the State.

For the purpose of effecting exchanges based on lands of equal acreage the identification and area of unsurveyed school sections may be determined by protraction or otherwise. The selection by the State of lands in lieu of an such protracted school sections shall be a waiver of all its right to such sections.

(d) Before any such exchange under this section shall be effected, notice of the contemplated exchange, describing the lands involved, shall be published by the Secretary of the Interior once each week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands to be accepted, and in the same man-

ner in some like newspaper published in any county in which may be situated any lands to be given in such exchange; lands conveyed to the United States under this Act shall, upon acceptance of title, become public lands, and if located within the exterior boundaries of a grazing district they shall become a part of the district within the boundaries of which they are located: PROVIDED, That either party to an exchange based upon equal value under this section may make reservations of minerals, easements, or rights of use. Where reservations are made in lands conveyed either to or by the United States the right to enjoy them shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary. Where mineral reservations are by made the grantor in lands conveyed by the United States, it shall be so stipulated in the patent, and any person who prospects for or acquires the right to mine and remove the reserved mineral deposits may enter and occupy so much of the surface as may be required for all purposes incident to the prospecting for, mining and removal of the minerals therefrom, and may mine and remove such minerals, upon payment to the owner of the surface for damages caused to the land and improvements thereon. No fee shall be charged for any exchange of land made under this Act except one-half of the cost of publishing notice of a proposed exchange as herein provided. (43 U.S.C., sec. 315g)

SEC. 9. The Secretary of the Interior shall provide, by suitable rules and regulations, for cooperation with

local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wildlife interested in the use of the grazing districts. The Secretary of the Interior shall provide by appropriate rules and regulations for local hearings on appeals from the decisions of the administrative officer in charge in a manner similar to the procedure in the land department. The Secretary of the Interior shall also be empowered to accept contributions toward the administration, protection, and improvement of lands within or without the exterior boundaries of a grazing district, moneys so received to be covered into the Treasury as a special fund, which is hereby appropriated and made available until expended, as the Secretary of the Interior may direct, for payment of expenses incident to said administration, protection, and improvement, and for refunds to depositors of amounts contributed by them in excess of their share of the cost. (43 U.S.C., sec. 315h)

SEC. 10. Except as provided in sections 9 and 11 hereof, all moneys received under the authority of this Act shall be deposited in the Treasury of the United States as miscellaneous receipts, but the following proportions of the moneys so received shall be distributed as follows: (a) 12½ per centum of the moneys collected as grazing fees under section 3 of this Act during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the grazing districts producing such moneys are situated, to be expended as the State legislature of such State may prescribe for the benefit of the county or

counties in which the grazing districts producing such moneys are situated: PROVIDED. That if any grazing district is in more than one State or county, the distributive share to each from the proceeds of said district shall be proportional to its area in said district; (b) 25 per centum of all moneys collected under section 15 of this Act during any fiscal year when appropriated by the Congress, shall be available until expended solely for the construction, purchase, or maintenance of range improvements; and 50 per centum of all moneys collected under section 15 of this Act during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the lands producing such moneys are located, to be expended as the State legislature of such State may prescribe for the benefit of the county or counties in which the lands producing such moneys are located: PROVIDED, That if any leased tract is in more than one State or county, the distributive share to each from the proceeds of said leased tract shall be proportional to its area in said leased tract. (43 U.S.C., sec. 315i)

SEC. 11. That when appropriated by Congress, 33⅓ per centum of all grazing fees received from each grazing district on Indian lands ceded to the United States for disposition under the public-land laws during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which said lands are situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county or counties in

which such grazing lands are situated. And the remaining 66⅔ per centum of all grazing fees received from such grazing lands shall be deposited to the credit of the Indians pending final disposition under applicable laws, treaties, or agreements. The applicable public-land laws as to said Indian ceded lands within a district created under this Act shall continue in operation, except that each and every application for non-mineral title to said lands in a district created under this Act shall be allowed only if in the opinion of the Secretary of the Interior the land is of the character suited to disposal through the Act under which application is made and such entry and disposal will not affect adversely the best public interest, but no settlement or occupation of such lands shall be permitted until ninety days after allowance of an application. (43 U.S.C., sec. 315j)

SEC. 12 That the Secretary of the Interior is hereby authorized to cooperate with any department of the Government in carrying out the purposes of this Act, and in the coordination of range administration, particularly where the same stock graze part time in a grazing district and part time in a national forest or other reservation. (43 U.S.C., sec. 315k)

SEC. 13. That the President of the United States is authorized to reserve by proclamation and place under national forest administration in any State where national forests may be created or enlarged by Executive Order any unappropriated public lands lying within watersheds forming a part of the national forests which, in his opinion, can best be administered in

connection with existing national-forest administration units, and to place under the Interior Department administration any lands within national forests, principally valuable for grazing, which, in his opinion can best be administered under the provision of this Act: PROVIDED, That such reservations or transfers shall not interfere with legal rights, acquired under any public-land laws so long as such rights are legally maintained. Lands placed under the national-forest administration under the authority of this Act shall be subject to all the laws and regulations relating to national forests, and lands placed under the Interior Department administration shall be subject to all public-land laws and regulations applicable to grazing districts created under authority of this Act. Nothing in this section shall be construed so as to limit the powers of the President (relating to reorganizations in the Executive departments) granted by title 4 of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933. (43 U.S.C., sec. 315 l)

SEC. 14. That section 2455 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 2455. Notwithstanding the provisions of section 2357 of the Revised Statutes (U.S.C., title 43, sec. 678) and of the Act of August 30, 1890 (26 Stat. 391), it shall be lawful for the Secretary of the Interior to order into market and sell at public auction, at the land office of the district in which the land is situated for not less than the appraised value, any isolated or disconnected

tract or parcel of the public domain not exceeding one thousand five hundred and twenty acres which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land office of the district in which such land may be situated: PROVIDED, That for a period of not less than thirty days after the highest bid has been received, any owner or owners of contiguous land shall have a preference right to buy the offered lands at such highest bid price, and where two or more persons apply to exercise such preference right the Secretary of the Interior is authorized to make an equitable division of the land among such applicants, but in no case shall the adjacent land owner or owners be required to pay more than three times the appraised price: PROVIDED FURTHER, That any legal subdivisions of the public land, not exceeding seven hundred and sixty acres, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of the said Secretary, be ordered into the market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this section: PROVIDED FURTHER, That this section shall not defeat any valid right which has already attached under any pending entry or location. The word 'person' in this section shall be deemed to include corporations, partnerships, and associations." (43 U.S.C., sec. 1171)

SEC. 15. The Secretary of the Interior is further authorized, in his discretion, where vacant, unappro-

priated, and unreserved lands of the public domain are so situated as not to justify their inclusion in any grazing district to be established pursuant to this Act, to lease any such lands for grazing purposes, upon such terms and conditions as the Secretary may prescribe: PROVIDED, That preference shall be given to owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit proper use of such contiguous lands, except that when such isolated or disconnected tracts embrace seven hundred and sixty acres or less, the owners, homesteaders, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, during a period of ninety days after such tract is offered for lease, upon the terms and conditions prescribed by the Secretary: PROVIDED FURTHER, That when public lands are restored from a withdrawal, the Secretary may grant an appropriate preference right for a grazing lease, license, or permit to users of the land for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to the time of their restoration. (43 U.S.C., sec. 315m)

SEC. 16. Nothing in this Act shall be construed as restricting the respective States from enforcing any and all statutes enacted for police regulation, nor shall the police power of the respective States be, by this Act, impaired or restricted, and all laws heretofore enacted by the respective States or any thereof, or that may hereafter be enacted as regards public health or public welfare, shall at all times be in full force and

effect: PROVIDED, HOWEVER, That nothing in this section shall be construed as limiting or restricting the power and authority of the United States. (43 U.S.C., sec. 315n)

SEC. 17. Superseded by 1946 Reorganization Plan No. 3, sec. 403, effective July 16, 1946 (11 F.R. 7876, 60 Stat. 1100). (43 U.S.C., sec. 315o)

SEC. 18. (a) In order that the Secretary of the Interior may have the benefit of the fullest information and advice concerning physical, economic, and other local conditions in the several grazing districts, there shall be an advisory board of local stockmen in each such district, the members of which shall be known as grazing district advisers. Each such board shall consist of not less than five nor more than twelve members, exclusive of wildlife representatives, one such representative to be appointed by the Secretary, in his discretion, to membership on each such board. Except for such wildlife representatives, the name of the members of each district advisory board shall be recommended to the Secretary by the users of the range in that district through an election conducted under rules and regulations prescribed by the Secretary. No grazing district adviser so recommended, however, shall assume office until he has been appointed by the Secretary and has taken an oath of office. The Secretary may, after due notice, remove any grazing district adviser from office if in his opinion such removal would be for the good of the service.

(b) Each district advisory board shall meet at least once annually at a time to be fixed by the Secre-

tary of the Interior, or by such other officer to whom the Secretary may delegate the function of issuing grazing permits, and at such other times as its members may be called by such officer. Each board shall offer advice and make recommendation on each application for such a grazing permit within its district: PROVIDED, That in no case shall any grazing district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested. Each board shall further offer advice or make recommendations concerning rules and regulations for the administration of this Act, the establishment of grazing districts and the modification of the boundaries thereof, the seasons of use and carrying capacity of the range, and any other matters affecting the administration of this Act within the district. Except in a case where in the judgment of the Secretary an emergency shall exist, the Secretary shall request the advice of the advisory board in advance of the promulgation of any rules and regulations affecting the district. (43 U.S.C., sec. 315o-1)

AN ACT

To authorize the Secretary of the Interior to issue patents to States under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended by the Act of June 26, 1936 (49 Stat. 1976), subject to prior leases issued under section 15 of the said Act.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA

IN CONGRESS ASSEMBLED, That the Secretary of the Interior in adjudicating State exchanges, under section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended by the Act of June 26, 1936 (49 Stat. 1976), involving lands embraced in outstanding leases under section 15 of said Act issued prior to the filing of the State exchange application, is hereby authorized upon the request of any State to issue patent to the State, subject to such outstanding lease: PROVIDED, That the United States shall not by reason of the issuance of any such patents be required to account to the State for any money due and collected prior thereto as rent for any part of the then-current annual rental period except as is now provided by law. (43 U.S.C., sec. 315p).

Approved, August 24, 1937 (50 Stat. 748).

AN ACT

(THE PIERCE ACT)

To provide for the leasing of State, county, and privately owned lands for the purpose of furthering the orderly use, improvement and development of grazing districts.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Secretary of the Interior in his discretion is authorized to lease at rates to be determined by him any State, county, or privately owned lands chiefly valuable for grazing purposes and lying within the exterior boundaries of a grazing district when, in his judgment, the leasing

of such lands will promote the orderly use of the district and aid in conserving the forage resources of the public lands therein: PROVIDED, That no such leases shall run for a period of more than ten years and in no event shall the grazing fees paid the United States for the grazing privileges on any of the lands leased rental paid by the United States for any of such under the provisions of this section be less than the lands: PROVIDED FURTHER, That nothing in this section shall be construed as authorizing the appropriation of any moneys except that moneys heretofore or hereafter appropriated for construction, purchase, and maintenance of range improvements within grazing districts, pursuant to the provisions of sections 10 and 11 of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), may be made additionally available by Congress for the leasing of land under this Act.

SEC. 2. That the lands leased under this Act shall be administered under the provisions of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), commonly known as the Taylor Grazing Act.

SEC. 3. That contributions received by the Secretary of the Interior under section 9 of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), toward the administration, protection, and improvement of any district shall be additionally available for the leasing of lands under this Act.

SEC. 4. All moneys received by the Secretary of the Interior in the administration of leased lands as provided in section 2 of this Act shall be deposited in the Treasury of the United States as miscellaneous receipts, but are hereby made available, when appropriated by the Congress, for the leasing of lands under this Act and shall not be distributed as provided under sections 10 and 11 of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976). (43 U.S.C., sec. 315m-1).

Approved, June 23, 1938 (52 Stat. 1033).

AN ACT

Relating to the administration of grazing districts.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Secretary of Interior may require field employees of the Bureau of Land Management to furnish horses and miscellaneous equipment necessary for the performance of their official work and may provide at Government expense forage, care, and housing for such animals and equipment. (43 U.S.C., sec. 315o-2). Approved, December 18, 1942 (56 Stat. 1067); 1946 Reorganization Plan No. 3, sec. 403, effective July 16, 1946 (11 F.R. 7876, 60 Stat. 1100).

AN ACT

Authorizing the head of the department or agency using the public domain for national defense purposes to compensate holders of grazing permits and licenses for losses sustained by reason of such use of public lands for national defense purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding grazing permits or licenses and persons whose grazing permits or licenses have been or will be cancelled because of such use shall be paid out of the funds appropriated or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. Nothing herein contained shall be construed to create any liability not now existing against the United States. (43 U.S.C., sec. 315q).

Approved July 9, 1942 (56 Stat. 654) as amended May 28, 1948 (62 Stat. 277).

43 U.S.C., sec. 315r—In administering the provisions of sec. 315q (above), payments of rentals may be made in advance. October 29, 1949, Title III, sec. 301 (63 Stat. 996).

Appendix C

THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS
(43 C.F.R. Parts 4110, et seq.)

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

Part 4110—Grazing Administration (Inside Grazing Districts)

(The Federal Range Code for Grazing Districts)

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

Sec.
4110.0-2 Objectives.
4110.0-3 Authority.
4110.0-5 Definitions.

Subpart 4111—Awards of Grazing Privileges

4111.1 Qualifications of applicants.
4111.1-1 Qualifications.
4111.1-2 Effect of transfer arising through operation of law.
4111.2 Base property qualifications and classification.
4111.2-1 Minimum requirements; classification of base properties.
4111.3 Adjudication and apportionment of grazing privileges.
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4111.3-2 Procedures.
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4111.4-2 Increases.
4111.4-3 Reductions.

Subpart 4112—Management Practices

4112.2 Designation of ranges for particular kinds of livestock.
4112.3 General rules of the range.
4112.3-1 Acts prohibited.
4112.3-2 Rules of fair range practice.

Subpart 4113—Supervision and Inspection

4113.1 Procedure for enforcement of rules and regulations.

Sec.

Subpart 4114—Local Associations of Stockmen

4114.1 Grazing district advisory boards.
4114.1–1 Authorization for establishment; number of members; qualifications.
4114.1–2 Election, time and place, the general procedures.
4114.1–3 Appointment; term of office; removal; vacancies.
4114.1–4 Meetings; organization.
4114.1–5 Functions and duties of district advisers; limitations.
4114.2 State advisory boards.
4114.2–1 Membership and meetings.
4114.2–2 Functions and duties.
4114.3 National Advisory Board Council.
4114.4 Local associations of stockmen.
4114.4–1 Organization.
4114.4–2 Articles of incorporation; constitutions; by-laws.
4114.4–3 Powers.
4114.4–4 Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.

Subpart 4115—Records and Administrative Procedures

4115.2 Procedures.
4115.2–1 License and permit procedures; requirements and conditions.
4115.2–2 Transfers and relinquishments.
4115.2–3 Appeals and hearings.
4115.2–4 Special rules for grazing districts.
4115.2–5 Range improvements and contributions.
4115.2–6 Pledge of licenses and permits as security loans.

AUTHORITY: The provisions of this Part 4110 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

SOURCE: The provisions of this Subpart 4110 appear at 35 F.R. 9761, June 13, 1970, unless otherwise noted.

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0-2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of Federal range will be required of all users.

§ 4110.0-3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0-2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

* * * * *

Subpart 4112—Management Practices

SOURCE: The provisions of this Subpart 4112 appear at 35 F.R. 9764, June 13, 1970, unless otherwise noted.

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of live-

stock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3-1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose,

except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3-2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) (1) State laws and regulations relating to sanitary and branding requirements for livestock shall be followed by graziers using the Federal range.

(2) However, the following minimum branding requirements are mandatory for livestock authorized to graze the Federal range: (i) All cattle, horses, and burros over 6 months of age must carry a brand which has been filed with the District Manager, and (ii) All sheep and goats over 6 months of age must be identified with earmarks, paint brands, or other markings

filed with the District Manager. The District Manager may, for good cause, exempt certain livestock (such as show animals) from the minimum branding requirements. An alternative method of identifying the animals shall be used in such instances.

(3) To the extent that State laws and regulations are lacking or less stringent than the regulations in this paragraph, the regulations in this paragraph are minimum and controlling on the Federal range.

(4) The District Manager shall retain the discretionary authority to require eartagging and other marking of livestock in order to abate trespass and promote the orderly administration of the range.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing

a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

[35 FR 9764, June 13, 1970, as amended at 39 FR 34415, Sept. 25, 1974]

Subpart 4113—Supervision and Inspection

SOURCE: The provisions of this Subpart 4113 appear at 35 F.R. 9765, June 13, 1970 unless otherwise noted.

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3-2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Local Associations of Stockmen

SOURCE: The provisions of this Subpart 4114 appear at 35 F.R. 9765, June 13, 1970, unless otherwise noted.

§ 4114.1 Grazing district advisory boards.

§ 4114.1-1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended

by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1-2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups

to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1-3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period, after which a person shall be recommended by election for the balance of the period of

recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1-4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1-5 Functions and duties of district advisors; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concern-

ing a permit, or an application therefor, in which he is directly or indirectly interested.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2-4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2-1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director

from nominations made by State or local government officers or organizations reflecting nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2-2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

[38 FR 34664, Dec. 17, 1973]

§ 4114.4 Local associations of stockmen.

§ 4114.4-1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4-2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be or-

ganized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4-3 Powers.

Such local associations shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) [Reserved]

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

[35 FR 9765, June 13, 1970, as amended at 40 FR 25454, June 16, 1975]

§ 4114.4-4 Cooperative agreements for use of lands; obligations of licensees and permittees to share cost.

Whenever the grazing capacity on Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

* * * * *

Appendix D

United States District Court
for the District of Columbia

Civil Action No. 1983-73

Natural Resources Defense Council, Inc., et al.,
Plaintiffs,
vs.
Rogers C. B. Morton, et al.,
Defendants.

[Filed Dec. 30, 1974]

MEMORANDUM OPINION

This matter is before the court on cross-motions for summary judgment by plaintiffs, federal defendants and defendants-intervenors. It presents important issues concerning the applicability of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.* (1970), to the livestock grazing permit program of the Bureau of Land Management, United States Department of Interior. Five of the six plaintiffs are environmental organizations whose general objectives are to enhance and protect the environment and to insure proper resource management; the remaining plaintiff is an individual who has specialized in studying bighorn sheep and whose scientific, conservation and esthetic interests are allegedly injured. Defendants-intervenors are non-profit organizations concerned primarily with range management. Plaintiffs satisfy the standards for standing set forth in *Sierra Club v. Morton,* 405 U.S. 727 (1972), and jurisdiction is conferred by 42 U.S.C. §§ 4321 *et seq.* (1970).

The Bureau of Land Management Permit Program

The Bureau of Land Management (BLM) is charged with managing and protecting over 171 million acres of public or national resource lands located in 11 western states.[1] These lands not only contain valuable environmental and recreational resources, but also provide grazing for an estimated 14 percent of all livestock in the United States during some parts of their lives. Livestock operators hold approximately 24,000 BLM licenses, permits, and leases to graze their stock on 150 million of the 171 million acres administered by the Bureau. The issuance and regulation of these licenses constitutes one of the main activities of the BLM. It also carries on activities such as vegetation control and the construction of fences and watering facilities designed to improve grazing and protect the land, and works closely with other federal agencies in such areas as watershed maintenance and soil conservation.

The Bureau's management of the public lands is carried out at three levels or stages of intensity.

[1]Responsibility for these lands is entrusted to the Secretary of the Interior pursuant to the Taylor Grazing Act, 43 U.S.C. §§ 315 *et seq.* (1970).

About 7 million acres are, and will continue to be, managed in a merely custodial fashion due primarily to their scattered and isolated locations. Approximately 108 million acres are administered in a fashion the BLM describes as "the best management attainable within the limits of manpower and funding." It is, however, the goal of the BLM to bring 133 of the 171 million acres of public lands under the third category of management—intensive management—by the year 2000. Currently, however, only 25 million acres (18 percent) are under intensive management.

The 52 BLM grazing districts are the agency's basic management component. The procedures which these districts follow for administering an area under intensive management are rather involved. Each district is divided into planning units and a unit resource analysis (URA) containing a detailed inventory of resources is prepared for each one. After public comment, a land use plan called a management framework plan (MFP) containing a set of "goals, objectives, and constraints" is prepared for each planning unit. Once the MFP is completed, more specialized plans known as program activity plans are prepared for each type of resource-related activity, such as timbering, recreation, and grazing, in the unit. An activity plan is designed to lay out in detail how the particular activity will comport with the objectives and constraints of the management plan for that particular unit. The program activity plan for grazing is called an allotment management plan (AMP). A planning unit may contain a number of grazing allotments. It is estimated that the program, continued

under present trends, will result in the implementation of 8,230 AMP's (total projected need) by the year 2000.[2] Approximately 1,015 AMP's were implemented prior to July 1973 and another 200 were pending at that time. Before any AMP or other activity plan is implemented it is first determined whether an environmental impact statement is required for the plan. It is against the background that the court must examine the BLM's compliance with NEPA.

The National Environmental Policy Act

Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. § 4332 (1970), requires that a detailed environmental impact statement (EIS) be prepared for every major federal action significantly affecting the quality of the human environment. This rather general legislative language has been explained and interpreted in guidelines published by the Council on Environmental Quality (CEQ), the agency established by NEPA to serve as a research, resource, and advisory body to the President. *See* Preparation of Environmental Impact Statements: Guidelines, 40 C.F.R. §§ 1500 *et seq.* (1974). The CEQ Guidelines provide that the environmental assessment should be made as early as possible, and in all cases prior to agency decision concerning recommendations or favorable reports on proposals for major federal actions significantly affecting the environment. 40 C.F.R. § 1500.2(a) (1974). These Guidelines apply both to new and continuing projects. *Id.* § 1500.5(2).

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[2]BLM, Draft Environmental Impact Statement, Livestock Grazing Management on National Resource Lands I-2 (April 1974).

The BLM has prepared a draft programmatic EIS for its entire livestock grazing program. *See* Bureau of Land Management, Draft Environmental Impact Statement, Livestock Grazing Management on National Resources Land (March 1974). The BLM contends that this statement will provide an overview of the cumulative impact of the grazing program and will serve as the foundation for subsequent environmental analyses and for supplemental impact statements which may be prepared for smaller land areas or on an individual basis for specific grazing management actions.[3] The BLM does not indicate, however, under what circumstances it will be necessary to prepare supplemental statements.[4]

Plaintiffs contend that the BLM has failed to comply with the provisions of sub-paragraph (C) of section 102(2) of NEPA in that they have issued and renewed grazing permits in each year from 1970 to the present, and propose to continue doing so, without preparing an EIS dealing with the actual environmental impact of such actions. Plaintiffs argue that the overall programmatic EIS for grazing does not suffice since it fails to consider the individualized, "on the ground" effects on local environments. They ask that the court declare the actions of the BLM

[3]One such action might be the implementation of an allotment management plan.

[4]CEQ Guidelines provide that in a situation in which a programmatic statement is appropriate subsequent statements on major individual actions will be necessary only where such actions have significant environmental impacts not adequately evaluated in the programmatic statement. 40 C.F.R. § 1500.6 (d)(1) (1974).

to be violations of NEPA and seek an order establishing a cut-off date for the preparation of appropriate EIS statements. It should be noted that plaintiffs do not seek to enjoin the present issuance of licenses nor do they ask that impact statements be prepared for every license or permit. They ask rather that detailed individual statements be prepared on an appropriate district or geographic level to assess the actual impact of the issuance of federal grazing permits on local environments.

The Taylor Grazing Act

The responses of the federal defendants and the defendants-intervenors differ significantly. Defendants-intervenors argue that NEPA does not require impact statements with regard to the licensing of public lands for grazing since the Taylor Grazing Act, 43 U.S.C. §§ 315 *et seq.* (1970), which established the licensing program is an operative and effective method of protecting the environment of the public lands and to superimpose NEPA on the Taylor Act would substantially interfere with the enforcement of the latter. Defendants-intervenors further argue that the BLM rules, regulations, and administrative procedures protect the environment and should apparently be considered the functional equivalent of an impact statement. As support for this argument they cite *Portland Cement Association v. Ruckelshaus,* 486 F.2d 375 (D.C. Cir. 1973), in which the Court of Appeals for the District of Columbia partially exempted the Environmental Protection Agency (EPA) from the NEPA requirements. In doing so,

however, the court took pains to point out that a very narrow exemption was being established for EPA determinations under section 111 of the Clean Air Act, 42 U.S.C. § 1857c-6 (1970), as *amended* (Supp. II, 1972). *Id.* at 387. This exemption clearly does not extend to the Taylor Grazing Act. An analogy of the Taylor Act to NEPA is invalid since the Taylor Act is not purely an environmental act, but was designed both to stop injury to the public domain by unregulated grazing and to promote stabilization of the livestock industry. *See LaRue v. Udall,* 324 F.2d 428, 430 (D.C. Cir. 1963), *cert. denied,* 376 U.S. 907 (1967); *United States v. Hatahley,* 220 F.2d 666, 671 (10th Cir. 1955); *modified,* 351 U.S. 173 (1956). To call the Taylor Grazing Act purely environmental is to ignore its language and its history.

NEPA and the Grazing Program

Defendants-intervenors also contend that NEPA does not apply to the BLM licensing program since the program will not significantly affect the quality of the human environment and does not constitute major federal action. However, the statutory phrase "actions significantly affecting the quality of the environment" is intentionally broad, "reflecting the Act's attempt to promote an across-the-board adjustment in federal agency decision making so as to make the quality of the environment a concern of every federal agency." *Scientists' Institute for Public Information, Inc. v. AEC,* 481 F.2d 1079, 1088 (D.C. Cir. 1973). The term "actions" refers not only to actions taken by a federal agency but also to decisions

made by the agencies, such as the decision to grant a license, which allow another party to take an action affecting the environment. *Id.* at 1088-89; *see* 40 C.F.R. § 1500.5(a)(2) (1974). Whether the granting of a single license requires the filing of an impact statement depends not upon the size of the geographical area affected, but on the nature and severity of the impact. *Cf. Save Our Ten Acres v. Kreger,* 472 F.2d 463 (5th Cir. 1973) (construction of federal office building); *Hanly v. Kleindienst,* 471 F.2d 823 (2d Cir. 1972), *cert. denied* 412 U.S. 908 (1973), (construction of federal correctional facility). Grazing clearly may have a severe impact on local environments. Moreover, in some states the BLM administers a huge proportion of the state's acreage. In Nevada, for example, 86 percent of the total area of the state is administered by the BLM[5] and the record illustrates the damage that has occurred there from overgrazing and improper land management. *See generally,* Bureau of Land Management, Effects of Livestock Grazing on Wildlife, Watershed, Recreation and Other Resource Values in Nevada (April 1974). The court is therefore persuaded that the grazing permit program produces significant impacts on individual locales. And when the cumulative impact of the entire program is considered it is difficult to understand how defendants-intervenors can claim either

[5]Intervenors' Memorandum of Points and Authorities in Support of Motion to Intervene, filed January 2, 1974, at 10. This memorandum indicates that the state with the lowest amount of federal land is Washington, and even there 29 percent of the land area is federal.

that the impact of the program is not significant or that the federal action involved is not major.[6]

Federal defendants, unlike defendants-intervenors, concede that NEPA applies to the BLM grazing program but argue first that plaintiffs' suit is premature and should await issuance of the final programmatic impact statement,[7] and second that the Bureau is not in violation of the Act since the programmatic impact statement sufficiently complies with the intent of NEPA.[8]

Exhaustion of Administrative Remedies

Federal defendants urge that plaintiffs' suit is not timely since under the doctrine of exhaustion of administrative remedies the BLM should have an opportunity to prepare an EIS which it believes satisfies NEPA's requirements before plaintiffs may seek

[6]Defendants-intervenors also argue that the plaintiffs' remedy should be barred by the doctrine of laches. However, the court agrees with Judge Friendly that the "hardiness of the parties in raising the issue cannot excuse compliance with NEPA." *City of New York v. United States*, 337 F. Supp. 150, 160 (E.D.N.Y. 1972) (three-judge court). The primary responsibility for fulfilling the requirements of the Act rests with the agency. *Id.; Jones v. Lynn*, 477 F.2d 885, 892 (1st Cir. 1972); *see Calvert Cliffs' Coordinating Committee v. AEC*, 449 F.2d 1108, 1118-19 (D.C. Cir. 1971).

[7]Federal defendants also contend that there is no "final agency action" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 704 (1970). The APA, however, specifically provides that the court may compel action which has been unlawfully withheld or unreasonably delayed. *Id.* § 706; *see Environmental Defense Fund v. Froehlke*, 348 F. Supp. 338, 341 (W.D. Mo. 1972), *aff'd*, 477 F.2d 1033 (8th Cir. 1973).

[8]Plaintiffs and federal defendants agree that although NEPA applies to programs which were instituted prior to NEPA with no apparent completion date, it does not require that the program be halted until an EIS is filed. *See Lee v. Resor*, 348 F. Supp. 389 (M.D. Fla. 1972); 40 C.F.R. § 1500.5(a)(2) (1974).

court action. In support of this contention federal defendants cite *Coalition for Safe Nuclear Power v. AEC*, 463 F.2d 954 (D.C. Cir. 1972), and *Committee to Stop Route 7 v. Volpe*, 4 ERC 1681 (D. Conn. 1972). In *Coalition for Safe Nuclear Power* the court rejected as premature plaintiffs' request for injunctive relief against construction of a power plant pending full NEPA review. The court indicated that exhaustion of agency proceedings was normally required and remanded for specific hearing by the agency within 60 days. This court agrees with plaintiffs, however, that the case is inapposite, since the AEC provided a specific hearing procedure which does not exist in the present case. *See id.* at 955-56. Moreover, there is merit to the observation of the court in *Natural Resources Defense Council, Inc. v. Tennessee Valley Authority*, 367 F. Supp. 122 (E.D. Tenn. 1973), that it is doubtful whether there is a true administrative remedy available to private individuals under NEPA. *Id.* at 130-31. The court stated:

> "There only exists the right to comment and express one's views, a right which a person always has. We are, therefore, of the opinion that the exhaustion of the administrative remedies doctrine has no application under the facts of this case." *Id.*

See also Minnesota Environmental Control Citizens Association v. AEC, 4 ERC 1876, 1878 (D. Minn. 1972). The court finds federal defendants reliance on *Committee to Stop Route 7, supra*, equally misplaced since plaintiffs do not quarrel with the content of the programmatic EIS, nor do they seek to have the court

inject itself in its preparation. Plaintiffs instead contend that the proposed statement, even if an excellent programmatic EIS, is insufficient standing alone. They argue that they need not await a final version of the impact statement since it is not review of the specifics of the final agency programmatic statement which they seek, but a declaration that a programmatic statement does not comply with the law. The court is in agreement with this analysis of the complaint.

Moreover, the rationale of the doctrine of exhaustion of remedies is to allow the agency time to complete its assigned duties before judicial intervention is countenanced. The Court of Appeals for this Circuit, in considering the relation of the notice provision of the Federal Water Pollution Control Act[9] to the requirement of exhaustion of administrative remedies stated:

> "Sound discretion bids a court stay its hand upon petition by the Administrator where there is reason to believe that further agency consideration may resolve the dispute and obviate the need for further judicial action. However, . . . the court may promptly proceed to the merits of the action when it is confident or becomes confident that agency recourse is futile, as where the agency's position is firm." *Natural Resources Defense Council v. Train,* Civil No. 74-1433 (D.C. Cir., Dec. 5, 1974), slip op. at 20.

[9]33 U.S.C. § 1365(b)(2) (Supp. II, 1972). This section requires notice to the agency before commencing a civil suit to enforce provisions of the Act.

This court might be less willing to consider the plaintiffs' claims if the BLM had demonstrated more diligence in pursuing its own role. The Bureau did not determine to prepare a programmatic EIS on the grazing program until June, 1972, two and one-half years after the effective date of the Act.[10] A preliminary draft was not then issued until March, 1973, with a second draft in October, 1973. In March of 1974 the final draft was prepared and the federal defendants represented to the court that the final EIS was expected to be issued in the summer of 1974. Although the court would naturally prefer to await the filing of the final statement, it is clear that the BLM has delayed beyond reason. Indeed, in *Natural Resources Defense Council v. TVA, supra,* the entire process of preparing the programmatic EIS, from initiation of research to issuance of the final statement, appears to have taken only six months. 367 F. Supp. at 131.

It should be noted that the only apparent step left in the approval of the draft impact statement is the incorporation of public comments received after publication in the Federal Register.[11] Even in the unlikely event that significant alternations were made in the final statement, the agency has shown no willingness to alter the statement's format as a strictly

[10]BLM procedures for implementing the policy and directives of NEPA were published in July 1972. *See* 37 Fed. Reg. 15015 (1972).

[11]Notice of availability of the draft was published April 16, 1974. *See* 39 Fed. Reg. 13697 (1974). The comment period was extended to July 16, 1974. *See id.* 22169.

programmatic assessment. Thus the eventual EIS will not be geographically individualized and its ultimate adoption will have no effect on plaintiffs' current suit.[12]

One other factor has persuaded the court to reach the merits of this claim. Over the past four years the BLM has shown relatively slow progress in implementing a thorough management planning system which would assist in protecting the environment. As noted above, the BLM estimated that 8,230 AMP's are needed. Only 1,015 plans were implemented through fiscal year 1973, and completion of all AMP's is not estimated until the year 2000. Thus, in a substantial and practical sense there is a serious threat of injury to the public lands which lends urgency to plaintiffs' claims. While the court should always be reluctant to rule on issues before full and final agency determination, to wait until the filing of the final programmatic EIS would be a useless act and would thwart Congressional intent, reducing NEPA to a mere "paper tiger." Having considered the above, it appears to the court that there are no appropriate agency procedures which plaintiffs should be required to exhaust and that the situation dictates a decision by this court on the merits of the claim.

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[12]The doctrine of exhaustion of remedies is closely related to the doctrine of primary jurisdiction which is generally applied to insure uniformity of treatment and regulation. The application of the latter and the granting of a stay pending administrative action rest in the sound discretion of the court considering all facts and circumstances presented to it. *Ratner v. Chemical Bank New York Trust Co.*, 309 F. Supp. 983 (S.D. N.Y. 1970).

BLM's Programmatic Impact Statement

Section 102 of NEPA provides in pertinent parts:

> "The Congress authorizes and directs, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall——
>
> * * *
>
> (B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in the decisionmaking along with economic and technical considerations; . . ." 42 U.S.C. § 4332 (1970).

Section 102 then establishes the requirement that impact statements be filed in all major federal actions significantly affecting the human environment. Thus NEPA makes environmental protection part of the mandate of every federal agency, compelling them to consider environmental issues just as they consider other matters within their mandate. *See Calvert Cliffs' Coordinating Committee v. AEC,* 449 F.2d 1108, 1112 (D.C. Cir. 1971). The courts have followed a strict interpretation of these provisions in a number of cases despite weighty counter-considerations. In *Natural Resources Defense Council v. Morton,* 458 F.2d 827 (D.C. Cir. 1972), the District of Columbia Circuit upheld an injunction of oil and gas leases on

the continental shelf off of Louisiana despite the profound national energy crisis and although the shelf was an established prolific source. *Id.* at 831. In another case, involving the nation's helium reserve program, NEPA was held by the court to be "nothing less than a mandate to the Secretary of the Interior to either follow the prescribed procedure in taking the relevant action or to show that it is not 'possible' within the meaning of the NEPA." *National Helium Corp. v. Morton,* 326 F. Supp. 151, 156 (D. Kan.), *aff'd* 455 F.2d 650 (10th Cir. 1971). And in *Calvert Cliffs' Coordinating Committee v. AEC, supra,* the District of Columbia Circuit noted that the spectre of a national power crisis must not be used to create a blackout of environmental considerations in the agency review process. 449 F.2d at 1122. The court in *Calvert Cliffs'* discussed the NEPA requirements and stated that:

> "the Section 102 duties are not inherently flexible. They must be complied with to the fullest extent, unless there is a conflict of statutory authority. Considerations of administrative difficulty, delay or economic cost will not suffice to strip the section of its fundamental importance." 449 F.2d at 1115 (citation omitted).

The court thus underscored the rigor with which the NEPA requirements must be applied and the importance of adhering to a strict interpretation to these provisions, further stating:

> "Our duty, in short, is to see that important legislative purposes, heralded in the halls of Congress, are not lost or misdirected in the vast hallways of the federal bureaucracy." 449 F.2d at 1111.

This court is therefore constrained to follow the requirements of NEPA to the maximum extent possible.

The court has examined the cases cited by the parties, especially *Natural Resources Defense Council v. TVA, supra,* on which federal defendants rely to establish the appropriateness and sufficiency of their programmatic statement. In that case defendant TVA purchased coal under contracts of various lengths to supply TVA generating facilities. Defendant TVA completed an EIS which examined the policies involved in selecting coal sources and weighed the problems of strip versus deep coal mining. This EIS was filed to cover all of the present and future actions by TVA dealing with coal procurement; TVA did not prepare impact statements for individual contracts. The court, after careful scrutiny of the EIS and of the provisions of section 9(b) of the TVA Act[13] requiring competitive bidding on all contracts, determined that the filing of individual impact statements for each term coal contract would conflict with the Act's competitive bidding requirements. The court went on to find that, even absent a contrary conflict, the programmatic EIS and the applicable TVA regulations were within the spirit of the recommendations set out by the Council for Environmental Quality. 367 F. Supp. at 131.

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[13] 16 U.S.C. § 831h(b) (1970).

The court does not believe that the same conclusions are permissible in the present case. As noted above, the 102(2)(C) requirements are not to be dispensed with lightly. In section 102 Congress authorizes and directs preparation of detailed impact statements "to the fullest extent possible." This language has been consistently construed to require compliance with NEPA unless such compliance would give rise to a violation of other statutory authority under which the agency is proceeding. *Natural Resources Defense Council v. TVA, supra* at 125; *Environmental Defense Fund v. TVA*, 468 F.2d 1164, 1175 (6th Cir. 1972); *Calvert Cliffs' Coordinating Committee v. AEC, supra,* at 1114-15. No such direct conflict between NEPA and the Taylor Grazing Act exists. The Taylor Act is not purely environmental since it is aimed at promoting the highest use of the public lands; NEPA seeks to protect the environment. *Compare* 43 U.S.C. § 315 (1970) *with* 42 U.S.C. § 4321 (1970). These two purposes, as pointed out above, are not the same, but are not in such conflict that a rigorous application of NEPA would give rise to violations of the Taylor Act.

Moreover, in *Natural Resources Defense Council v. TVA, supra,* the plaintiffs sought to compel the agency to file statements for each long term coal contract. The entire operation of numerous generating facilities was dependent on securing coal supplies, and prices in the coal market fluctuated greatly. Delay caused by the preparation of impact statements, normally six months to a year, would have limited seriously the number of coal companies which

would bid on TVA term coal contracts. 367 F. Supp. at 125-26. No such considerations are present in this case. Plaintiffs do not ask that impact statments be filed for every license or permit issued or renewed by the BLM. Nor do they seek an immediate injunction of the licensing program which could admittedly have a most deleterious effect on the entire livestock industry. While the permit program might be jeopardized at some future time, livestock operators would not be affected at this time by a finding that the programmatic EIS prepared by the BLM was legally insufficient.[14]

The purposes of an EIS were summarized by the court in *Environmental Defense Fund v. TVA*, 339 F. Supp. 806 (E.D. Tenn.), *aff'd*, 468 F.2d 1164 (6th Cir. 1972) as follows:

> "The purpose of a section 102 (2)(C) detailed environmental impact statement is (1) to aid the agency's decision-making process and (2) to advice the public of the environmental consequences of the proposed action. The requirement

[14]In *Scientists Institute for Public Information, Inc. v. AEC, supra*, the Court of Appeals for this Circuit approved a programmatic statement as an appropriate manner in which to assess a broad program to develop nuclear reactors. It did not, however, condone the filing of a mere environmental survey. In addition, the programmatic statement covered future, not ongoing action.

As plaintiffs point out at least one type of program statement referred to in the CEQ Guidelines would be appropriate "in order to assess the environmental effects of a number of individual actions on a given geographical area." *See* 40 C.F.R. § 1500.5(1) (1974). That does not, strictly speaking, encompass the present situation since the "given geographical area" contemplated by the BLM's EIS is comprised of 171 million acres. In the present case, plaintiffs are seeking impact statements focused at the district or local level for purposes of assessing the environmental effects of permits for the grazing of livestock on such local geographic areas.

> seeks to insure that each agency decision-maker has before him, and takes into account, all environmental impacts of a particular project. Only if this is done will the most intelligent, optionally [sic] beneficial decision be likely to result. Moreover, the detailed statement provides evidence that these factors have been taken into account. More importantly, it allows those removed from the decision-making process to evaluate and balance the factors on their own. *Id.* at 810.

In the BLM grazing license program the primary decision-maker is generally the individual district manager and his staff who approve license applications. While the programmatic EIS drafted by the BLM provides general policy guidelines as to relevant environmental factors, it in no way insures that the decision-maker considers all of the specific and particular consequences of his actions, or the alternatives available to him.[15] The proposed EIS does not provide the detailed analysis of local geographic conditions necessary for the decision-maker to determine what course of action is appropriate under the circumstances.

Additionally, the programmatic EIS does not allow those who are not part of the decision-making process to adequately evaluate and balance the factors on their own. While NEPA does not require public hearings, it does provide a formalized procedure for such

[15]CEQ Guidelines provide as follows:
"The amount of detail provided in such descriptions should be commensurate with the extent and expected impact of the action, and with the amount of information required at the particular level of decisionmaking (planning, feasibility, design, etc.)." 40 C.F.R. § 1500.8(a)(1) (1974).

citizen input. In the present case the public will have the opportunity to comment only on the programmatic impact statement. Undoubtedly national organizations, such as plaintiff NRDC, will provide comments and engage in the review process. However, when it comes to the actual implementation of the licenseing permit program at the local level, there will be no opportunity for particularized input by state and local citizens.[16] Even though the actual permits may be made public, that provides only information from the government to the citizens and does not allow information to flow from the citizens to the government.[17] As the court stated in *Calvert Cliffs' Coordinating Committee v. AEC supra,* "[c]oncerned members of the public are thereby precluded from raising a wide range of environmental issues in order to affect particular . . . decisions. And the special purpose of NEPA is subverted." 449 F.2d at 1123.

Returning again to *Natural Resources Defense Council v. TVA, supra,* one last important factor distinguishes the case at bar from the coal contract situation. The mandatory TVA contract provision required mining companies to submit a pre-mining report prior to the time TVA awarded its contracts. Each report considered environmental problems such as acids, slides, erosion and esthetics involved in the particular area to supply the coal under the contract.

[16]The only real opportunity for local comment appears to be after the preparation of the unit resource analysis.

[17]There has been some recognition by the BLM that this type of input is desirable, as witnessed by the expansion of the Grazing Advisory Boards from merely livestock operators to include some environmental representatives. *See generally* 43 C.F.R. §§ 4114.1-1, 4114.2-1, 4114.3-1 (1973).

367 F. Supp. at 127-28. Such reports appear to deal in a most particularized and detailed manner with the environmental factors specifically related to the area to be mined. While the BLM has certain licensing requirements, they relate mainly to the timing and duration of the allowable grazing period and the number of animals involved.[18] The court has examined the Federal Range Code, 43 C.F.R. §§ 4110.0-2 *et seq.* (1973), portions of the BLM Manual, and sample licenses and finds them insufficient to fulfill the purpose defined for an impact statement. They do not adequately assess[19] the individual district or area situations so as to provide the local decision-maker with the data necessary to analyze the alternatives open to him and their consequences.[20] A program statement may be very helpful in assessing recurring policy issues and insuring consideration of the cumulative impact that numerous decisions might

[18]Permits and leases for terms, generally 10 years, are made only after an AMP is agreed to between BLM and the grazer. The AMP is therefore a part of the term permit. In areas for which no AMP has been prepared only annual licenses are issued.

[19]Indeed the BLM itself, in its report concerning public lands in Nevada indicates that the MFP's should be more specific in their recommendations and get away from "motherhood statements." Bureau of Land Management, Effects of Livestock Grazing on Wildlife, Watershed, Recreation and Other Resource Values in Nevada, *supra,* at 9. The report also notes that many Nevada AMP's are ineffective and did not have sufficient studies made on them. *Id.* at 6. This is not to say, however, that a thorough and adequate AMP, in conjunction with a programmatic statement might not meet the NEPA requirements. However, AMP's exist for only a portion of the millions of acres supervised by the BLM.

[20]In *Natural Resources Defense Council v. TVA, supra,* the court also found that the Council on Environmental Quality had given the impression that it had accepted the procedure of a single program statement for TVA's coal purchases. No such representation has been made in the present case.

have on the environment, but that does not mean that it will suffice to fulfill the NEPA mandate. The court is convinced that the BLM programmatic statement alone, unrelated to individual geographic conditions, does not permit the "finely tuned and 'systematic' balancing analysis" mandated by NEPA. *See Calvert Cliffs' Coordinating Committee v. AEC, supra* at 1113.

While the BLM may decide in the future to prepare specific impact statements on new activities, for the present grazing will continue on millions of acres without adequate individualized assessment of the impact of such grazing on local environments,[21] and extensive environmental damage is possible. Indeed, the plaintiffs note that the BLM Budget Justification for fiscal year 1973 estimated that only 16 percent of the BLM managed grazing land was in good or excellent condition while 84 percent was in fair, poor or bad condition. In addition, plaintiffs present evidence from both private and governmental sources demonstrating that serious deterioration of BLM lands is taking or has taken place. In its first annual report, the Council on Environmental Quality reported that overgrazing had dramatically affected the public lands.

> "Much of this land, particularly the vast public domain, remains in desperate condition, as wind,

[21]The court is cognizant of the fact that the Department of the Interior is also preparing several other programmatic statements on activities such as watershed protection and herbicide usage which relate in part to grazing. There is nothing, however, to support an argument that "major individual actions" can proceed without a specific EIS while "broad program statements" are under preparation.

> rain, and drought have swept over them and eroded their exposed soils. Although the effects of overgrazing in rich pastures or prairie farmland can be quickly corrected, the process is often irreversible on the limited soils and arid climate of much of the public lands." CEQ, Environmental Quality 182 (1970).

Unfortunately this situation has not been rectified since that date. A recent Bureau of Land Management report entitled *Effects of Livestock Grazing on Wildlife, Watershed, Recreation and Other Resource Values in Nevada* (April 1974) documents the serious damage being wrought on the environment. The report, compiled by a team of BLM resource managers, states flatly that wildlife habitat is being destroyed. "Uncontrolled, unregulated or unplanned livestock use is occurring in approximately 85 percent of the State and damage to wildlife habitat can be expressly [sic] only as extreme destruction." *Id.* at 13. Overgrazing by livestock has caused invasion of sagebrush and rabbitbrush on meadows and has decreased the amount of meadow habitat available for wildlife survival by at least 50 percent. The reduced meadow area has caused a decline in both game and non-game population. *Id.* at 26. In addition, there are 883 miles of streams with deteriorating and declining wildlife habitat, thus making it apparent, according to the report, that grazing systems do not protect and enhance wildlife values. *Id.* at 14, 29.[22]

[22]Whether the original deterioration occurred before or during BLM management is irrelevant since the crucial questions are whether it can be allowed to continue and whether it will be exacerbated by continued grazing.

While Congress has determined that public lands should be put to the best use possible, it has also demonstrated a strong interest in protecting the environment. In the present case over 100 million acres of public land are being leased for grazing although apparently no thorough analysis has been made of the specific impact of such activity. The court is, therefore, of the opinion that major federal actions having significant effects on the environment are being taken without full NEPA compliance, even though that Act has been in effect almost five years.

The court is aware that, like many agencies, the BLM has been given large scale tasks to be accomplished with limited manpower. That does not mean, however, that the agency may ignore or pay mere lip service to the NEPA requirements. In addressing a similar problem in *Natural Resources Defense Council v. Train, supra,* Judge Leventhal wrote:

> "Although these steps may be cumbersome, even awesome, they may well be within the agency's grasp, at least generally. The court's injunction should serve like adrenalin, to heighten the response and to stimulate the fullest use of resources. This may run the risk of overstimulating the organism, but palliative measures may be taken with regard to specific categories if indicated at a later date." Slip op. at 39.

Judge Leventhal continued:

> "If relief is granted by the court, the issue of any shortfall in performance by the agency will become a matter for discussion within the pertinent committees and bodies of the legislature. The court will have done all that the legislature

could fairly have contemplated from the judicial function of assuring executive compliance with the legislative mandate." Slip op. at 43.

For the above reasons the court will grant relief to the plaintiffs by entering a judgment declaring that the programmatic environmental impact statement prepared by the BLM, standing alone, is not sufficient to comply with the NEPA requirements. As noted above, plaintiffs have not sought an impact statement for each permit. The crucial point is that the specific environmental effects of the permits issued, and to be issued, in each district be assessed. It will be initially within the BLM's discretion to determine whether to make this specific assessment in a separate impact statement for each district, or several impact statements for each district, or one impact statement for several districts or portions thereof, or indeed by other means. So long as the actual environmental effects of particular permits or groups of permits in specific areas are assessed, questions of format are to be left to defendants. The court will maintain jurisdiction in order to facilitate future review of the methods chosen by the BLM, and a time period for agency formulation of procedures will be set by subsequent order on recommendation of the parties. An appropriate Judgment accompanies this Memorandum Opinion.

/s/ Thomas A. Flannery
United States District Judge

December 30, 1974
Date

United States District Court
for the District of Columbia

Civil Action No. 1983-73

Natural Resources Defense Council, Inc., et al.,
Plaintiffs,
vs.
Rogers C. B. Morton, et al.,
Defendants.

[Filed Dec. 30, 1974]

JUDGMENT

This matter came before the court on the cross-motions of plaintiffs, federal defendants, and defendants-intervenors for summary judgment. This court having determined that the federal defendants have violated §102(2) of the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (1970), with respect to their issuance or renewal of permits for the grazing of domestic livestock upon the Public Lands administered by the Bureau of Land Management and that plaintiffs' are, therefore, entitled to declaratory relief, it is by the court this 30th day of December, 1974,

ORDERED that plaintiffs' motion for summary judgment as to the federal defendants' violation of the

National Environmental Policy Act be, and the same hereby is, granted; and it is further

ORDERED that the motions of federal defendants and defendants-intervenors for summary judgment be, and the same hereby are, denied; and it is further

ORDERED, ADJUDGED and DECLARED that:

1. The proposed Bureau of Land Management programmatic environmental impact statement, standing alone, is not sufficient to comply with the requirements of § 102(2) of the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (1970);

2. Defendants Rogers C. B. Morton and Curtis J. Berklund have a mandatory, non-discretionary duty pursuant to § 102(2) to prepare, publicly circulate, and consider environmental impact statements which satisfy the National Environmental Policy Act in all respects and which discuss in detail the environmental effects of the proposed livestock grazing, and alternatives thereto, in specific areas of the public lands which are or will be licensed for such use, subject to the timetable to be established pursuant to paragraphs 3 or 4 of this Order and in accordance with the Memorandum Opinion accompanying this Judgment;

3. The federal defendants shall confer with plaintiffs within the next thirty days for the purpose of determining whether the parties can agree on a schedule for preparation of the above-described statements. Upon such agreement, the parties shall submit a stip-

ulation which sets forth that schedule for this court's approval and entry of a further order thereon;

4. In the event that the parties cannot agree on a schedule for the preparation of the above-described statements they shall so advise this court by motion or otherwise not later than forty-five days after entry of this Order, and they shall request this court to set an appropriate schedule or indicate whether discovery is required to determine same; and

5. This court shall retain jurisdiction of this matter until the federal defendants have complied with the terms and conditions of this judgment; and it is further

ORDERED and ADJUDGED that judgment be entered for plaintiffs.

/s/ Thomas A. Flannery
United States District Judge

Appendix E

United States District Court
for the District of Columbia

Civil Action No. 1983-73

Natural Resources Defense Council, Inc., et al.,
Plaintiffs.

vs.

Rogers C. B. Morton, et al.,
Defendants.

Pacific Legal Foundation, et al.,
Defendants-Intervenors.

[Filed Jan. 28, 1975]

ORDER

This matter is before the court on defendants-intervenor's motion to reconsider this court's judgment of December 30, 1974 in this action, or in the alternative for a stay pending resolution of their appeal. Plaintiffs oppose both motions and federal defendants have taken no position.

The court has considered the memoranda submitted by the parties and has determined that no basis for reconsideration exists. While defendants-intervenors question the court's reliance on an exhibit entitled *Effects of Livestock Grazing on Wildlife, Watershed,*

Recreation and Other Resource Values in Nevada prepared by the Bureau of Land Management, the court is of the opinion that, even if the exhibit contains inaccuracies there is other evidence in the record which is more than sufficient to support the court's findings.

The court further finds that a stay of the judgment pending appeal would be inappropriate since defendants-intervenors will not be injured by the declaratory relief ordered by the court. Federal defendants have not sought a stay and have begun negotiations to carry out the order of the court. In light of the foregoing, it is by the court this 28th day of January, 1975,

ORDERED that defendants-intervenors' motions be, and the same hereby are, denied.

/s/ Thomas A. Flannery
United States District Judge

Appendix F

In the United States District Court
for the District of Columbia

Civil Action No. 1983-73

Natural Resources Defense Council, Inc., et al.,
Plaintiffs,
vs.
Rogers C. B. Morton, et al.,
Defendants.

Pacific Legal Foundation, et al.,
Defendants-Intervenors.

[Filed Jun. 18, 1975]

FINAL JUDGMENT

This matter originally came before the Court on the cross-motions of plaintiffs, federal defendants, and defendants-intervenors for summary judgment. On December 30, 1974, this Court issued its Memorandum Opinion and Judgment in which it granted plaintiffs' motion for summary judgment and denied those of the federal defendants and the defendants-intervenors. In such Judgment, the Court determined, *inter alia*, that the federal defendants are required by Section 102(2) of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et*

seq., to prepare environmental impact statements which discuss in detail the environmental effects of livestock grazing, and alternatives thereto, on specific areas of the public lands under the jurisdiction of the Bureau of Land Management (BLM) which are or will be authorized for such use. Paragraph 3 of the Judgment further required that the plaintiffs and federal defendants confer for the purpose of determining whether they could agree upon a schedule for the preparation of Environmental Impact Statements required by such order and that upon such agreement the parties submit a stipulation setting forth that schedule for the Court's approval and entry of a further order thereon. Upon reading and filing The Agreement, dated April 11, 1975, between the plaintiffs and the federal defendants, in which the parties thereto stipulate to the entry of a final judgment herein (supplementing the Judgment of December 30, 1974) and good cause appearing therefor, it is by the Court this 18th day of June, 1975,

HEREBY ORDERED ADJUDGED AND DECLARED that:

1. The aforesaid agreement dated April 11, 1975, hereinafter referred to as The Agreement, is hereby approved by the court as a means for full and complete compliance with the aforesaid order of December 30, 1974.

2. The Bureau of Land Management, hereinafter referred to as BLM, shall cause to be prepared, publicly circulated, and considered in their decisionmaking processes as required by law, Environmental Im-

pact Statements, hereinafter referred to as EIS(s), concerning the environmental effects of livestock grazing activities (hereinafter defined) on the public lands of the United States specified in Exhibit A of The Agreement. Such EIS's shall comply with the National Environmental Policy Act (NEPA) in all respects and shall be considered to be completed when filed with the Council on Environmental Quality and notice of the same is published in the Federal Register.

3. An EIS shall be completed for each of the 212 specific geographical areas of the public lands which the Federal Defendants have demarcated for such purpose. These areas, approximating 150,000,000 acres, are identified in Exhibit A of The Agreement.

4. It is the intention of BLM that the aforesaid 212 EIS's will cover groupings of Allotment Management Plans, hereinafter referred to as AMP(s), which comprise those areas described in said Exhibit A, except in those cases of lands upon which no AMP will be prepared and/or implemented which consist of approximately 17 million acres and are, in BLM's opinion, suitable for only custodial grazing management by BLM or other priority uses. Of these 17 million acres, it is BLM's opinion that approximately 7 million acres are characterized as small and scattered tracts (generally less than 1 section in size), many of which have little resource value and/or where the Federal interest is grossly subordinate due to other ownership or by physical or administrative factors; and approximately 10 million acres will be

phased out for grazing purposes because of the physical or ecological limitations, or because of the need for higher priority uses such as recreation sites, wildlife sanctuaries, mineral development, or timbered areas, or disposed of by transfer or other means. Plaintiffs understand that the preceding statements in this subparagraph reflect BLM's intentions and views on these matters, but the procedures and methodology for the preparation of EIS's, as specified in this subparagraph, are by this Court's order to be left for initial determination by the Federal Defendants and therefore are not the subject of agreement by Plaintiffs. However, it is ordered that said 17 million acres shall nonetheless be treated by EIS(s) as provided in The Agreement covering the livestock grazing activities occurring on such lands even though no AMP may be prepared and/or implemented.

5. One EIS on the Challis Planning Unit, Salmon District, Idaho, shall be completed by the end of FY 1976. This EIS will be used as the initial model for preparation of future EIS's. During FY 1977 through and including FY 1981 the EIS's will be completed in accordance with the schedule shown in Exhibit B of The Agreement (which comprises a total of 70 EIS's on approximately 104,000,000 acres).

6. During FY 1982 through and including FY 1988, all of the EIS's remaining to be prepared as contemplated by The Agreement shall be completed in such period and shall be completed at a yearly rate of at least 14% of the total (141), cumulative minimum, and provided further, that notice of land

descriptions and the number of EIS's to be completed each year, beginning in 1982, shall be published in the Federal Register at least 60 days prior to the beginning of each such year.

7. Each EIS contemplated by The Agreement will discuss in detail "livestock grazing activities" and all reasonable alternatives thereto. "Livestock grazing activities" as used in this Order shall mean all existing or proposed livestock grazing, all grazing use authorizations issued or contemplated to be issued by BLM as well as those substantial activities which are supportive of and related to livestock grazing administered by BLM, such as fencing, livestock water development, spraying, chaining, seeding, and brush removal.

8. It is ordered that BLM will not implement any AMP or its equivalent after the end of FY 1975 (which will allow implementation of not more than 5 AMP's prior to the end of FY 1975) prior to the completion of an EIS covering such AMP, and further that the Federal Defendants recognize that action(s) which are supportive of grazing as described in subparagraph (7) above may have significant impact on the human environment and it is hereby ordered that in such cases, no such action(s) will be undertaken without an EIS completed on such action or area. Until an appropriate EIS is completed, the Federal Defendants will adhere to the current policy of limiting authorizations for livestock grazing on any given area to an annual authorization basis, to the extent allowed by law.

9. The parties in The Agreement have set forth a schedule which they believe is, at this time, attainable. However, if the Federal Defendants, in good faith, believe the circumstances require deviations from the EIS completion schedule and procedures as contemplated by The Agreement, such deviations can be made by BLM if they are "immaterial deviations", as defined hereinafter; provided that notwithstanding that the Federal Defendants need not seek from the court or the Plaintiffs consent or approval to make immaterial deviations, BLM will nonetheless advise the Plaintiffs in writing of such deviations as they occur.

10. If the Federal Defendants believe, in good faith, that circumstances dictate that any material deviations must be made, then in that event, the Federal Defendants shall give Notice to this Court wherein a detailed explanation shall be made of the deviation which is anticipated to occur together with the reason(s) therefor. This Notice shall be filed prior to the anticipated implementation of such deviation, and contemporaneously a copy of such Notice shall be sent by registered mail to all parties to this action (No. 1983-73) and such Notice shall be published in the Federal Register. Thereafter, if objections are filed with the court within 30 days from the date of publication in the Federal Register, the Federal Defendants and the objecting parties may make such motions and present evidence to the court as to them seems proper, and the court shall determine if such deviations shall be allowed to occur or make any

other appropriate order; provided, however, that if no objections are filed with the court within such 30 day period, BLM shall be authorized to implement such deviation.

11. The term "immaterial deviation" for the purpose of this order shall mean any change or deviation from the terms and conditions of The Agreement which have any of the following effects:

1. To reduce the number of acres to be covered by EIS's during any of the first five years as described on said Exhibit B by less than 10,000,000 acres cumulatively, but provided that such reduction shall include not more than 2,000,000 acres in any one year.

2. To reduce the number of EIS's to be completed (70) during any of the first five years as described on said Exhibit B by less than 3 EIS's cumulatively, but provided that such reduction shall include not more than 1 EIS in any one year, and further provided that any such EIS's on areas on said Exhibit B which remain to be completed at the close of the first five years will be completed in the succeeding year.

3. To reduce the number of EIS's scheduled in The Agreement for completion (141) during the years after the first five years by 2 or less in any one year; but provided that any EIS's remaining to be completed at the end of FY 1988 will be completed in the succeeding year.

12. This order shall in no way foreclose or affect any contentions, claims or rights of judicial review which Plaintiffs may have concerning the compliance with NEPA, in any respect, of any given EIS completed pursuant to this Order.

IT IS SO ORDERED

/s/ Thomas A. Flannery
United States District Judge

Appendix G

United States Court of Appeals
for the District of Columbia Circuit

September Term, 1975

Civil 1983-73

No. 75-1134

National Resources Defense Council, Inc., et al.,

vs.

Rogers C. B. Morton, in his official capacity as Secretary of the United States Department of the Interior, et al.

Pacific Legal Foundation and Public Lands Council, Inc., Appellants.

[Filed Jan. 16, 1976]

Appeal from the United States District Court
for the District of Columbia

Before: McGowan and Wilkey, Circuit Judges and Albert V. Bryan,* United States District Judge for the Eastern District of Virginia

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c).

On consideration of the foregoing, It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause is hereby affirmed.

Per Curiam
For the Court
/s/ Robert A. Bonner
Robert A. Bonner
Clerk

*Sitting by designation pursuant to 28 U.S.C. § 292(d)